IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2970 OF 2005

DENA Bank ... Petitioner

V/s

1. Sharad D. Muni (since deceased) through
1(a). Mr. Vipul S. Muni
(L.R. of Respondent No.1) & anr. ... Respondents

Mr. Sunil Shukla for the petitioner.

Mr. Vineet Naik i/by M/s. Rustomji & Ginwala for the respondent No.1.

CORAM: P.V. KAKADE, J.

DATED: 13TH MARCH, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. This petition is filed against the order passed by the lower appellate Court dated 21.2.2005 refusing to issue Rule in Revision Application No. 27 of 2005 which was taken on Interlocutory Notice No.4 of 2005 in T.E. & R. Suit No. 250/271 of 2002. The revision was moved against the order of the Trial Court deciding the notice

and directing the suit to proceed for evidence of defendant No.1 according to law.

3. The defendant No.2 who was sub-tenant had taken out the notice requesting for direction for permission to hand over the possession of the suit premises alongwith keys to the landlord defendant No.1 and in the alternative defendant No.2 submitted that in the event defendant No.1 failed to take possession of the suit premises, then defendant No.2 Dena Bank may be permitted to hand over the vacant possession of the suit premises alongwith keys to their superior landlords. According to the defendant No.2, the Dena Bank were carrying banking activities from the suit premises by running their Bhuleshwar Branch. The branch was in loss and hence the defendant No.2 vacated the suit premises by 30.9.2004 and merged the branch with other branch of Dena Bank and that fact was intimated to their landlord defendant No.1 on 29.9.2004. Defendant No.2 Dena Bank requested their landlord defendant No.1 to collect the keys and receive vacant possession of the suit premises, however, they refused to do so and hence the notice was taken out.

6. The Trial Court was of the view that, it would be

proper to either change of hands of the possession or pass the decree on admission so far as the petitioner was concerned. It was also held that the suit was part-heard and yet termination as well as determination of tenancy of defendant No.1 was yet to establish and, therefore, defendant No.2 cannot be allowed to step in the shoes of tenant defendant No.1 and directly negotiate with the plaintiffs for surrender of tenancy. On these and other grounds the notice was discharged.

7. Revision was carried to the lower appellate Court who concurred with the view taken by the Trial Court and refused to issue Rule. Hence the petition.

8. At the outset, it may be noted that the reasoning adopted and finding recorded by both the Courts below appear to be just, legal and proper and it would not be desirable and legal to either held the lower Court to pass the decree on admission pending the suit especially when the plaintiff’s evidence is over and defendant is yet to step into the witness box.

Under the circumstances, I hold that there is no merit in the petition and, therefore, it stands dismissed with no order as to costs.

However, it is clarified that the Trial Court shall expedite the hearing of the matter so as to complete the evidence and other steps in the suit so as to dispose it off within four months from the date of this order.

The observations made hereinabove would not influence the Trial Court in any manner.

The Civil Application No. 712 of 2006 stands dismissed as infructuous.

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